

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

## LEONARD CARTER.

Plaintiff,

V.

CAROLYN W. COLVIN, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

CASE NO. 2:16-cv-00688 JRC  
ORDER ON PLAINTIFF'S  
COMPLAINT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and

Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge and Consent Form, Dkt. 7; Consent to Proceed Before a United States Magistrate Judge, Dkt. 9). Plaintiff filed an opening brief (*see* Dkt. 12) and defendant filed her response (*see* Dkt. 13). Plaintiff did not file an optional reply brief.

After considering and reviewing the record, the Court concludes that the ALJ did not commit harmful legal error when evaluating plaintiff's Social Security applications.

1 For example, one of plaintiff's examining doctors expressed concerns regarding  
2 malingering, and noted that plaintiff's presentation was not consistent. Dr. Meis noted  
3 that plaintiff "clearly has a focus on obtaining benefits, and his level of thought  
4 organization and persistence in attempting to obtain benefits appears to be excellent, and  
5 are not hindered by thought disorganization or delusional content" (AR. 925). However,  
6 in contrast, plaintiff endorsed flagrant delusional content, such as indicating a desire to  
7 build a spaceship in order to leave the planet (*id.*). Dr. Meis also noted that plaintiff  
8 demonstrated relatively "good performance on the cognitive exam, and good  
9 performance on ADLs" (AR. 927).

10  
11 In addition, plaintiff's alleged social limitations and some of the medical opinions  
12 regarding social limitations are inconsistent with plaintiff's presentation to the CDIU  
13 investigator, who found that plaintiff "was very neat and organized [and] did not appear  
14 to be anxious or uncomfortable and he was confident, down to earth, and easy to talk  
15 with" (AR. 616-17).

16 Therefore, for these and other reasons discussed herein, this matter is affirmed  
17 pursuant to sentence four of 42 U.S.C. § 405(g).

18 BACKGROUND

19 Plaintiff, LEONARD CARTER, was born in 1958 and was 49 years old on the  
20 alleged date of disability onset of May 31, 2008 (*see* AR. 266-72, 273-78). Plaintiff has  
21 some college credits in aviation welding and criminal justice (AR. 695-97). Plaintiff last  
22 worked doing telemarketing, and stopped work in 2006 (AR. 334, 700-01). Plaintiff  
23 contends that he was fired because he complained about a coworker "who started calling  
24

1 him all kinds of names . . . .” (AR. 921). At his July 12, 2012 hearing, plaintiff testified  
2 that he currently was maintaining a full-credit educational load of 12 credits or more (*see*  
3 AR. 56). He attended school Monday through Thursday from 10:00 am to 5:30 pm (*see*  
4 AR. 613). At the time of this hearing, plaintiff testified that he had a GPA of 4.0 (AR.  
5 57). On May 8, 2015, plaintiff reported that he “has a two-year welding degree, and is  
6 studying electrical engineering” (AR. 613, 921).

7 According to the ALJ, plaintiff has at least the severe impairments of “paranoid  
8 schizophrenia versus paranoid personality disorder versus personality disorder with  
9 antisocial, schizotypal, and paranoid traits; depression; a history of substance dependence  
10 in remission; left lower extremity impairment/pain; obesity; and hypertension (20 CFR  
11 404.1520(c) and 416.920(c))” (AR. 612).

13 At the time of the hearing on July 12, 2012, plaintiff was living alone in an  
14 apartment (AR. 703-04).

#### 15 PROCEDURAL HISTORY

16 Plaintiff’s applications for disability insurance benefits (“DIB”) pursuant to 42  
17 U.S.C. § 423 (Title II) and Supplemental Security Income (“SSI”) benefits pursuant to 42  
18 U.S.C. § 1382(a) (Title XVI) of the Social Security Act were denied initially and  
19 following reconsideration (*see* AR. 111-24, 125-38, 142-62, 163-84). Plaintiff’s initial  
20 hearing resulted in an unfavorable decision by the ALJ and a reversal and remand from  
21 the Court (*see* AR. 719-38, 755-71). Following remand, plaintiff failed to appear for his  
22 scheduled hearing before Administrative Law Judge Wayne N. Araki (“the ALJ”) on July  
23 30, 2015 (*see* AR. 715-18). On February 26, 2016, the ALJ issued a written decision in

1 which the ALJ concluded that plaintiff was not disabled pursuant to the Social Security  
 2 Act (see AR. 606-28).

3 In plaintiff's Opening Brief, plaintiff claims he is unable to work because of his  
 4 physical and mental disabilities and that Ms. Cindy Meinecke, A.R.N.P., M.P.H and Dr.  
 5 Hopfenbeck opined that plaintiff could not work in society (see Dkt. 12).

6 STANDARD OF REVIEW

7 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
 8 denial of social security benefits if the ALJ's findings are based on legal error or not  
 9 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d  
 10 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.  
 11 1999)).

12 DISCUSSION

13 Plaintiff is proceeding *Pro Se* and challenges generally the ALJ's assessment of  
 14 his physical and mental limitations (see Dkt. 12, pp. 1-2). The Court has liberally  
 15 construed his pleading. Defendant contends that there is no harmful legal error (see Dkt.  
 16 13).

17 **1. Mental complaints and limitations**

18 **a. Dr. Peter Meis, M.D., examining psychiatrist**

19 Plaintiff indicates in his Opening Brief that he "cannot work in society," indicating  
 20 reliance on opinions from Dr. James H. Hopfenbeck, M.D. and his assistant, Ms.  
 21 Vanessa Zsandani (Dkt. 12, p.1 (citing AR. 562, 568, 577)). However, as noted by the  
 22 ALJ, in May, 2015, plaintiff indicated to an examining psychiatrist, Dr. Peter Meis, M.D.,  
 23

1 that he felt as if other people did not like him, but he reported that he nevertheless got  
 2 along with others, and denied any behavioral problems at school (AR. 923; *see also* AR.  
 3 613 (citing B21F)).

4 The ALJ must provide “clear and convincing” reasons for rejecting the  
 5 uncontradicted opinion of either a treating or examining physician or psychologist.  
 6 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (citing *Embrey v. Bowen*, 849 F.2d  
 7 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)). When an  
 8 opinion from an examining or treating doctor is contradicted by other medical opinions,  
 9 the treating or examining doctor’s opinion can be rejected only “for specific and  
 10 legitimate reasons that are supported by substantial evidence in the record.” *Lester v.*  
 11 *Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (citing *Andrews v. Shalala*, 53 F.3d 1035,  
 12 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)); *see also* 20  
 14 C.F.R. §§ 404.1527(a)(2) (“Medical opinions are statements from physicians and  
 15 psychologists or other acceptable medical sources that reflect judgments about the nature  
 16 and severity of your impairment(s), including your symptoms, diagnosis and prognosis,  
 17 what you can still do despite impairment(s), and your physical or mental restrictions”).

18 At his most recent psychiatric evaluation, regarding persistence, plaintiff reported  
 19 to Dr. Meis that “he spends ‘endless’ hours studying at school” (*id.*). Plaintiff also denied  
 20 “having psychiatric problems which interfere with chores, shopping, transportation, or  
 21 with self-hygiene” (*id.*).  
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23 Plaintiff reported to Dr. Meis that “he wants to build a space shuttle and use  
 24 starlight and bounce all over the universe” (*id.*). He indicated that he would be able to

1 accomplish building his own space shuttle if he only had the funds (*id.*). He indicated that  
2 he does not attempt to do telemarketing work again because “white people don’t like  
3 him,” although he admits that he is not applying for work (*id.*). He does not appear to  
4 think that there are any other limitations preventing him from performing telemarketing  
5 work, and, as noted by the ALJ, plaintiff testified that “he enjoyed selling papers and  
6 magazines over the telephone and that he had thought about going into telemarketing  
7 business for himself, but lacked the financial resources . . . .” (*see id.*; *see also* AR.  
8 618).

9       Although Dr. Meis opined that plaintiff “endorsed significant delusional content,  
10 [he indicated that he] was not convinced [that plaintiff] was fully invested in what he was  
11 talking about” (AR. 924). The psychiatrist noted that plaintiff’s “level of though[t]  
12 organization and delusional content varied through the interview according to topic,” and  
13 Dr. Meis indicated he “was not always sure that [plaintiff] was spontaneous in his  
14 presentation” (*id.*).

16       Despite plaintiff’s report of a “down” mood, Dr. Meis observed that plaintiff’s  
17 “affect was euthymic, if slightly discouraged at times, and it was appropriate to content  
18 and incongruent with stated mood” (*id.*). Dr. Meis opined that plaintiff’s “affective range  
19 was fairly normal” (*id.*).

20       On mental status examination (“MSE”), Dr. Meis observed that plaintiff’s remote  
21 and recent memory were intact (*id.*). Dr. Meis also indicated that during “the narrative  
22 portion of the exam, [plaintiff’s] concentration was fair, and the claimant was not easily  
23 distracted” (*id.*). Plaintiff performed a simple three step task “easily” (*id.*).  
24

1 In his discussion/prognosis, Dr. Meis opined that plaintiff “clearly endorses a  
2 history of deceitfulness with lack of remorse, and is clearly benefit-seeking” (AR. 925).  
3 Dr. Meis opined that plaintiff’s psychotic symptoms are atypical. Although plaintiff  
4 endorsed flagrant delusional content, Dr. Meis opined that plaintiff “does not appear to be  
5 convincingly invested in these beliefs” (*id.*). Dr. Meis also noted that plaintiff’s “beliefs  
6 themselves are both unusual and vague, and not persistent or pervasive throughout the  
7 interview” (*id.*). Dr. Meis noted that when he asked plaintiff to “elaborate on his beliefs,  
8 he becomes vaguer” (*id.*). Dr. Meis noted that plaintiff “displays varying level of thought  
9 organization, most times being organized and linear . . . .” (*id.*). Dr. Meis noted that  
10 varying “level of thought organization during a single presentation is highly atypical”  
11 (*id.*). Dr. Meis noted that plaintiff “clearly has a focus on obtaining benefits, and his level  
12 of thought organization and persistence in attempting to obtain benefits appears to be  
13 excellent, and are not hindered by thought disorganization or delusional content” (*id.*).  
14 Dr. Meis opined that going to “outpatient psychiatric care while refusing to take  
15 medication generally does not make sense for someone with psychosis and no insight,  
16 [and] would be an excellent way of documenting a history of mental illness without  
17 exposing yourself to medication side effects, for someone interested in obtaining  
18 benefits” (*id.*). Dr. Meis indicated that he had a “concern for malingering,” although he  
19 noted that it is possible that plaintiff “is both malingering and psychiatrically impaired  
20 from a personality standpoint” (*id.*).  
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22 Regarding functional limitations, Dr. Meis opined that plaintiff suffers only from  
23 mild limitations in cognitive areas, such as understanding and remembering complex  
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1 instructions, noting plaintiff's relatively "good performance on the cognitive exam, and  
2 good performance on ADLs" (AR. 927). However, regarding social limitations, Dr. Meis  
3 opined that plaintiff suffered from various marked limitations, such as plaintiff's ability  
4 to interact appropriately with the public, with supervisors, with coworkers, and to  
5 respond appropriately to usual work situations and changes in a routine work setting (AR.  
6 928). In support, Dr. Meis opined that plaintiff, socially, was "very inappropriate and  
7 offensive," and that he "may become overly fixated on unproductive endeavors, for  
8 example, spaceship building" (*id.*).

9  
10 Noting Dr. Meis's indication of the importance of obtaining collateral information  
11 to validate plaintiff's presentation and reported history, the ALJ "ordered a CDIU  
12 [Cooperative Disability Investigations Unit] investigation, which was completed in late-  
13 2015 and revealed inconsistencies that erode the claimant's" allegations and testimony  
14 (AR. 616; *see also* AR. 1053-63). As noted by the ALJ, contrary to the opinions from  
15 various doctors and providers "that the claimant was always hostile, angry, and  
16 disorganized, [plaintiff] was very receptive when he met the investigator" (*id.*). The ALJ  
17 noted that during this encounter, plaintiff "was very neat and organized [and] did not  
18 appear to be anxious or uncomfortable and he was confident, down to earth, and easy to  
19 talk with" (AR. 616-17). The ALJ noted that plaintiff "was positive and laughed/joked  
20 quite a bit throughout the interview [and] stated that he was not working because he was  
21 in school" (AR. 617). As noted by the ALJ, plaintiff had been "studying electrical  
22 engineering at North Seattle Community College, where he had been attending since  
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1 winter quarter 2015 without complaints concerning security, disruption of class, or  
 2 expulsion" (*id.*).

3       Regarding his failure to credit fully plaintiff's allegations and testimony, the ALJ  
 4 found that plaintiff's "documented daily activities and social interaction are inconsistent  
 5 with his allegations of disabling functional in social deficits" (*id.*). Although plaintiff has  
 6 not challenged explicitly the ALJ's evaluation of his allegations and testimony, the Court  
 7 concludes that the ALJ offered clear and convincing reasons based on substantial  
 8 evidence in the record as a whole for the failure to credit fully plaintiff's allegations of  
 9 limitations. *See Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (citing *Dodrill v.*  
 10 *Shalala*, 12 F.3d 915, 918 (9th Cir.1993)) (If an ALJ rejects the testimony of a claimant  
 11 once an underlying impairment has been established, the ALJ must support the rejection  
 12 "by offering specific, clear and convincing reasons for doing so"). The Court notes that  
 13 the ALJ also relied on plaintiff's conviction for welfare fraud when discounting  
 14 plaintiff's testimony (*see* AR. 615), as well as plaintiff's "ability to fly to California,  
 15 [which] tends to suggest that the alleged symptoms and limitations may have been  
 16 overstated, [as] flights on airplanes that take several hours require airport check-ins with  
 17 luggage and standing in security lines [and] also requires one to interact appropriately  
 18 with other people in crowded airport terminals and on board the airplane" (AR. 617).

19       Regarding the medical opinion of Dr. Meis, the ALJ assigned "little weight to Dr.  
 20 Meis's consultative assessment that the claimant was markedly limited in his ability to  
 21 interact appropriately with others and respond appropriately to usual work situations and  
 22 to changes in a routine work setting" (AR. 619 (citing AR. 928)). In doing so, the ALJ

1 noted Dr. Meis's concerns regarding malingering and plaintiff's history of fraud, as well  
2 as Dr. Meis's opinion regarding plaintiff's atypical presentation (*id.*). The ALJ also noted  
3 the CDIU investigation which "subsequently revealed inconsistencies that supported Dr.  
4 Meis's concerns and diminish the claimant's [allegations of limitations]" (*id.*). Finally,  
5 the ALJ relied on his finding that Dr. Meis's opinion regarding social limitations "is also  
6 inconsistent with the claimant's ability to interact with peers and authority figures in  
7 earning his welding certificate and pursuing his degree in electrical engineering" (*id.*).  
8 Based on the record as a whole, the Court concludes that the ALJ provided clear and  
9 convincing reasons for his failure to credit fully the opinions from Dr. Meis regarding  
10 social limitations. *See Lester*, 81 F.3d at 830.

12 **b. Dr. James Hopfenbeck, M.D. and Dr. James Czysz, Psy.D**

13 Plaintiff contends that Dr. Hopfenbeck opines that plaintiff is "severely impaired  
14 and would pose a threat to -- at a job" (Dkt. 12, p. 2 (citing AR. 30)). Plaintiff actually is  
15 quoting his attorney's opening statement at his previous administrative hearing, held on  
16 July 12, 2012 (*see* AR. 30). Nevertheless, Dr. Hopfenbeck opined on July 27, 2011 that  
17 plaintiff suffered from marked limitations in his ability to communicate and perform  
18 effectively in a work setting with public contact and that he was severely limited in his  
19 ability to maintain appropriate behavior in a work setting, noting that plaintiff "would  
20 project paranoia; others would feel unsafe, threatened; has assaulted others in recent  
21 years" (AR. 434). Defendant contends that the ALJ reasonably declined to rely on the  
22 opinions of Dr. Hopfenbeck and Dr. Czysz (Dkt. 13, pp. 6-9).

1 Dr. Hopfenbeck provided a number of opinions regarding plaintiff's limitations  
2 and ability to work (*see* AR. 410, 432-35, 605, 909-15, 931). In addition to the specific  
3 limitations already mentioned, in June 27, 2012, Dr. Hopfenbeck indicated that plaintiff's  
4 diagnoses include major depression with psychotic features and a personality disorder  
5 with paranoid and antisocial features (*see* AR. 605). At that time, he also opined that  
6 plaintiff "has no ability to maintain social functioning, is constantly distracted by his  
7 obsessional delusions, and has repeatedly deteriorated and decompensated in work  
8 settings" (*id.*). On March 26, 2014, he opined that plaintiff had marked limitations in his  
9 ability to ask simple questions or request assistance; communicate and perform  
10 effectively in a work setting; complete a normal workday and workweek without  
11 interruptions from psychologically-based symptoms; as well as severe limitations in his  
12 ability to maintain appropriate behavior in a work setting (AR. 911).

14 In November 2011, Dr. James Czysz, Psy.D., provided a similar opinion to Dr.  
15 Hopfenbeck's (*see* AR. 436-42). For example, Dr. Czysz opined that plaintiff suffered  
16 from marked limitations in his ability to perform effectively in a work setting with  
17 limited public contact and severely limited in his ability to maintain appropriate behavior  
18 in a work setting (AR. 439). In his additional remarks, Dr. Czysz noted that in  
19 "considering negative impression management, there are some indications that [plaintiff]  
20 tended to portray himself in a negative light, although [he opined that] this pattern is  
21 relatively mild and does not necessarily render the test results uninterpretable" (AR. 440).  
22 Although plaintiff reported "a number of difficulties consistent with a significant  
23 depressive experience," Dr. Czysz noted that "there appear to be relatively few  
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1 physiological signs of depression," further noting that the "symptom picture appears to be  
2 relatively free of changes in energy, appetite, weight, and sleep patterns" (*id.*).

3 The ALJ discussed the opinions of Dr. Hopfenbeck and Dr. Czysz together, and  
4 failed to credit them fully (*see* AR. 619-20). The ALJ found that the doctors' opinions  
5 "are inconsistent with the claimant's documented daily activities set forth above" (AR.  
6 620). The ALJ specified that, as "noted by the District Court, at issue is primarily the  
7 claimant's social functioning and capacity to interact with others" (*id.*). The ALJ then  
8 reviewed the activities of plaintiff which he found to be inconsistent with the opinions  
9 from the doctors regarding plaintiff's social functioning:

10 The claimant earned a two-year welding degree at Everett Community  
11 College in 2014. After he applied for welding jobs but did not get hired,  
12 he enrolled in North Seattle Community College to pursue a degree in  
13 electrical engineering. The claimant's ability to attend college requires  
14 interaction with others (classmates, professors, etc.) and he testified  
15 about working with fellow students (July 2012 hearing testimony). His  
16 4.0 GPA (at least at the time of his hearing in 2012), and his ability to go  
17 [on to] earn his welding certificate and pursue a degree in electrical  
18 engineering, show that he has the ability to interact with a variety of  
19 peers and authority figures. He acknowledged that he did not have any  
20 behavioral problems at school and the CDIU investigator noted that the  
21 claimant was very receptive, down-to-earth, positive, and easy to talk  
22 with (internal citations to AR. 923, 1060).

23 (AR. 620).

24 The Court concludes that the findings by the ALJ are supported by substantial  
25 evidence in the record as a whole. The Court also concludes that the ALJ's rationale for  
26 failing to credit fully the opinions of Drs. Hopfenbeck and Czysz is clear and convincing.

1 For the reason stated and based on the record as a whole, the Court concludes the  
 2 ALJ did not commit harmful legal error when evaluating the medical evidence regarding  
 3 plaintiff's mental impairments and limitations.

4 **2. Physical complaints**

5 **a. Ms. Cindy Meinecke**

6 Although plaintiff contends that his "medical doctor," Ms. Cindy Meinecke,  
 7 ARNP, MPH, has opined that plaintiff cannot work due to physical ailments from the car  
 8 accident which occurred on July 29, 1997 (Dkt. 12, p. 1), defendant argues that Ms.  
 9 Meinecke is a family nurse practitioner, not a medical doctor (Dkt. 13, p. 9). Defendant  
 10 further argues that "the effects of [plaintiff's] leg condition were previously adjudicated  
 11 in a 2008 decision affirmed by this court in 2010" (*id.*). Furthermore, defendant contends  
 12 that "in any event, the ALJ identified inconsistencies between Ms. Meinecke's opinion  
 13 and other evidence in the record that are more than sufficient to meet the 'germane  
 14 reason' standard" (*id.* (citation omitted)). Defendant's arguments are persuasive.

16 Pursuant to the relevant federal regulations, in addition to "acceptable medical  
 17 sources," that is, sources "who can provide evidence to establish an impairment," 20  
 18 C.F.R. § 404.1513 (a), there are "other sources," such as friends and family members,  
 19 who are defined as "other non-medical sources" and "other sources" such as nurse  
 20 practitioners, physician assistants, therapists and chiropractors, who are considered other  
 21 medical sources, *see* 20 C.F.R. § 404.1513 (d). *See also Turner v. Comm'r of Soc. Sec.*,  
 22 613 F.3d 1217, 1223-24 (9th Cir. 2010) (citing 20 C.F.R. § 404.1513(a), (d)); Social  
 23 Security Ruling "SSR" 06-3p, 2006 SSR LEXIS 5 at \*4-\*5, 2006 WL 2329939. An ALJ

1 may disregard opinion evidence provided by both types of “other sources,” characterized  
2 by the Ninth Circuit as lay testimony, “if the ALJ ‘gives reasons germane to each witness  
3 for doing so.’” *Turner, supra*, 613 F.3d at 1224 (quoting *Lewis v. Apfel*, 236 F.3d 503,  
4 511 (9th Cir. 2001)); *see also Van Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir.  
5 1996).

6 Ms. Meinecke opined that plaintiff was disabled from a car accident in 1997 due  
7 to his chronic leg swelling and pain (*see AR. 390*). The ALJ adopted and incorporated the  
8 previous written decision from ALJ Alexis with respect to the opinion of Ms. Meinecke,  
9 other than a comment about Ms. Meinecke not being acceptable medical source (*see AR.*  
10 620). In this previous written decision, ALJ Alexis failed to credit fully Ms. Meinecke’s  
11 opinion regarding disability with a finding that it “conflicts with the record and with  
12 [plaintiff’s] activities of daily living as discussed at length above” (*see AR. 17*). ALJ  
13 Alexis provided examples, noting that while Ms. Meinecke “opines that the claimant has  
14 chronic leg pain and swelling, he helped a friend move stones during his relevant period  
15 at issue,” also noting that plaintiff exercises by riding a stationary bike, lifting weights,  
16 and walking (*see id. at 17-18*). In addition, ALJ Alexis noted that Ms. Meinecke admitted  
17 that she had not seen plaintiff since August 2010 (*see AR. 18 (citing AR. 425)*). These  
18 findings regarding an inconsistency are based on substantial evidence in the record as a  
19 whole (*see AR. 425, 468 (plaintiff “rides his stationary bike” and goes for walks), 505*  
20 (*lifts weights*), 506 (*plaintiff reported that he had “been moving stones for friend”*), 585  
21 (*lifting weights and using a stationary bike*)). The Court also notes that in one of these  
22 treatment records, from February 19, 2010, plaintiff reported that “if it keeps on being  
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1 sunny like this I will start running at the park" and was observed to be "in the best spirits  
2 that [the provider] had ever seen" (AR. 505).

3 The Court also concludes that the finding that these reports from the treatment  
4 record are inconsistent with the opinion from Ms. Meinecke regarding disability based on  
5 leg pain and swelling is a germane reason for failing to credit fully Ms. Meinecke's  
6 opinion. The ALJ did not err.

7 **b. Dr. Philip Buenvenida, M.D.**

8 Plaintiff mentions, but does not directly challenge the ALJ's failure to credit fully  
9 the opinion from Dr. Buenvenida, however, the Court notes that the ALJ indicated that he  
10 gave less weight to the opinion of Dr. Buenvenida versus the opinions of Dr. Merrill and  
11 Dr. Bernardez, as the ALJ found that these latter opinions were more "consistent with the  
12 claimant's longitudinal treatment history, the objective clinical findings, and his  
13 performance on physical examinations set forth above and in Judge Alexis's 2012  
14 decision" (AR. 618). Contrary to the opinion of Dr. Buenvenida that plaintiff was unable  
15 to lift more than 10 pounds, as noted above, and as noted in the previous written decision  
16 by ALJ Alexis, various activities of plaintiff, such as helping a friend move stones, are  
17 not consistent with this opinion, *see supra*, section 2.a (see, e.g., AR. 506 (plaintiff  
18 reported that he had "been moving stones for friend")). The Court concludes that the ALJ  
19 offered specific and legitimate rationale based on substantial evidence in the record as a  
20 whole for failing to credit fully the medical opinion of Dr. Buenvenida.

1 For the reasons stated and based on the record as a whole, Court concludes that the  
2 ALJ did not commit harmful legal error when evaluating the medical evidence regarding  
3 plaintiff's physical impairments and limitations.

4 **CONCLUSION**

5 Based on the stated reasons and the relevant record, the Court **ORDERS** that this  
6 matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

7 **JUDGMENT** should be for defendant the case should be closed.

8 Dated this 13th day of December, 2016.

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11 J. Richard Creatura  
12 United States Magistrate Judge  
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